# In the Supreme Court of the United States

OCTOBER TERM, 1967

---

No. 643

ALMA HELM AGAJAN, ET AL., PETITIONERS

*v.*

RAMSEY CLARK, ATTORNEY GENERAL OF THE UNITED STATES AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

---

## MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

---

The single question presented in this case is whether petitioners may maintain an action for the recovery of property vested under the Trading with the Enemy Act without filing a timely notice of claim as required by Section 33 of the Act, 50 U.S.C. App. 33. That Section provides in pertinent part that—

> No return may be made pursuant to section 9 or 32 * * * unless notice of claim has been filed

> * * * in the case of any property or interest acquired by the United States on or after December 18, 1941, not later than one year from February 9, 1954, or two years from the vesting of the property or interest in respect of which the claim is made, whichever is later. * * *

Petitioners are a group of individuals (or their successors in interest) claiming to be nonenemy stockholders of a Hong Kong corporation (Helm Bros., Ltd.) whose assets in the United States were vested in 1950 [1] by the Alien Property Custodian as enemy property. The corporation, on July 22, 1951, filed with the Custodian an administrative claim for the return of the vested corporate property. This claim was denied on July 22, 1964 upon a finding by the Custodian that after December 7, 1941 (1) the corporation had its principal place of business in Yokohama, Japan, and (2) that it had been controlled, at the outbreak of World War II, by citizens and residents of Japan and was thus an "enemy" within the meaning of the Trading with the Enemy Act.

Under the limitations provisions of Section 33, *supra*, the petitioners, as shareholders, had until February 8, 1955 to file a notice of claim with respect to any rights which they wished to assert as individuals in the vested corporate property. This they did not do until October 8, 1965—some ten years after the period of limitations had expired. The dis-

---

[1] Vesting Order No. 16313, 15 Fed. Reg. 9549 (December 8, 1950), as amended, 16 Fed. Reg. 1112 (January 19, 1951).

trict court dismissed the complaint on the ground that the petitioners failed to file a timely notice of claim with the respondent—a jurisdictional prerequisite to suit under the Act. The court of appeals affirmed.

Petitioners argue (Pet. 8-9) that the notice of claim filed by the Corporation should also be considered as having been filed on behalf of the individual stockholders. The court of appeals properly rejected this contention, stating (Pet. 10a):

> [The corporate notice of claim] was not a notice of claim of these * * * [petitioners]. It did set forth details respecting all the corporation's shareholders, with their names and addresses, nationalities and percentages of ownership. But it would overstrain the structure and language of the Act to construe this notice as one filed by the shareholders. Neither in the language of the Act nor elsewhere is there evidence of an intention on the part of Congress that a corporate entity should be considered to be identical with the individual entities who are its shareholders.

Petitioners urge, in the alternative (Pet. 14-15), that if they may not rely on the corporate notice of claim, the pendency of the corporate claim from 1951 until 1964 should be regarded as having tolled the statute of limitations as to them. Section 33 of the Act, 50 U.S.C. App. 33, provides that in computing the period during which the notice of claim must be made and suit instituted, "* * * there shall be excluded any period during which there was pending a suit or claim for return * * *." The court of appeals

properly rejected this argument as being without substance, holding that (Pet. 12a)—

> * * * the language of the Act excluding from the two-year period the time a claim was pending refers to a claim for the same interest involved in the suit which is filed; and we have expressed our opinion that the suit of these shareholders is not for the same interest involved in the claim of the corporation; so that the corporation's claim did not serve to toll the time within which the shareholders were required to sue.

There is no merit to petitioner's contention that the application of the limitation provision to bar their claim is inequitable because the claim filed by the corporation gave the Custodian all information that he would have acquired if the shareholders had filed individual claims (Pet. 6-7, 15). The short answer to this argument is that the corporate claim did not provide the most important item of information concerning the individual claims—that these particular individuals were claiming to be non-enemy persons entitled individually to property in respondent's possession. The question of a corporation's status as an "enemy" raises factual issues discrete from the question of the "enemy" status of a particular shareholder. See, generally, *N.V. Handelsbureau La Mola* v. *Kennedy*, 299 F. 2d 923 (C.A. D.C.), certiorari denied, 370 U.S. 940. Thus, the filing of a claim by the corporation did not put respondent on notice that he would have to make a factual determination of the "enemy" status of each of the shareholders. "The policy of statutes of limitations is to encourage prompt-

ness in the bringing of actions, so that the parties shall not suffer by loss of evidence from death or disappearance of witnesses, destruction of documents or failure of memory." *Missouri, Kansas & Texas Railway Company* v. *Harriman*, 227 U.S. 657, 672. This policy clearly applies in the instant case, where respondent did not receive the notice of petitioners' claims that they were non-enemies and entitled to a share of the corporation's assets until October 1965, more than ten years after the expiration of the period which Congress explicitly provided.

Nor does this Court's decision in *Honda* v. *Clark*, 386 U.S. 484, require the tolling of the limitation period in the instant case. In *Honda*, the petitioner had filed timely claims, *id.* at 488, but had failed to bring a suit contesting the Attorney General's determination of the rate of exchange to be applied in valuing their claims within the time prescribed by the statute. The Court there found a tolling of the statute of limitations because it concluded that the petitioners had reasonably withheld individual action during the pendency of a class action raising the identical question. Here, on the other hand, petitioners did not file a notice of claims until 10 years after the limitations period had expired and, as noted above, the adjudication of the suit by the corporation involved issues distinct from those raised by the claims of the individual shareholders.

In sum, the timely claim filed on behalf of the corporation in which petitioners claim to own stock cannot be construed as a claim on behalf of these peti-

tioners. The corporate claim was not filed as a representative claim on behalf of any shareholders.[2] Thus, the courts below correctly applied Section 33 in accordance with its plain terms.

## CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari be denied.

RALPH S. SPRITZER,
*Acting Solicitor General.*

OCTOBER 1967.

---

[2] Petitioners can derive no benefit from this Court's decision in *Kaufman* v. *Societe Internationale*, 343 U.S. 156 (Pet. 18-19). While the Court there permitted certain non-enemy stockholders in an enemy-tainted corporation to intervene in a suit by the corporation, and to assert in their own right an interest in vested corporate assets, it is clear that the assertion of the interest by non-enemy shareholders was seasonable. 343 U.S. at 161. Nothing said in *Kaufman* supports petitioners' basic contention that they need not make known and assert their rights by a timely claim. There is no support for such an exception in the statutory language or in judicial decisions. See *Ladue* v. *Brownell*, 220 F.2d 468 (C.A. 7), certiorari denied, 350 U.S. 823.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 279171 320